IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Not Reportable

Case no: 5061/2024

In the matter between

COPPER LAKE INVESTMENTS 226 CC	**APPLICANT**
and	
MASILONYANA LOCAL MUNICIPALITY	**FIRST RESPONDENT**
MUNICIPAL MANAGER: **MASILONYANA LOCAL MUNICIPALITY**	**SECOND RESPONDENT**

Neutral Citation: *Copper Lake Investments 226 CC v Masilonyana Local Municipality and Another* (5061/2024) [2025] ZAFSHC 350 (6 November 2025)

Coram: Naidoo J

Heard: Heads of Argument on Costs filed for consideration in Chambers 27 February 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time for hand-down of the judgment is deemed to be 11h00 on 6 November 2025.

Summary: Civil law – costs of application – opposed application – matter argued – settlement on merits reached – costs disputed – what would be a fair costs order.

ORDER

Each party is ordered to pay its own costs

JUDGMENT

Naidoo J

[1] This matter has its genesis in an application that was brought before this court on an urgent basis to interdict the first respondent from disconnecting the electricity supply to the applicant's property. The court granted an interim order on 5 September 2024 and issued a rule *nisi*, which was returnable on 17 October 2024. The respondents filed a notice opposing the application and filed their answering affidavit on 16 October 2024, which led to the rule *nisi* being extended and the matter being postponed to 28 November 2024. A day before the postponed return date, the respondents brought an urgent rule 30 application. I will deal with the reason for the rule 30 application later. On 28 November 2024, both the main application and the rule 30 application were postponed to 30 January 2025. The matter was heard on that day and judgment was reserved. However, the matter became settled thereafter and on 31 January 2025 and a draft order was presented to court, which was granted. In terms of the order, the first respondent was prohibited from disconnecting or disrupting the electricity supply at the premises of the applicant, Copper Lake Investments 226 CC, pending the resolution of the dispute relating to the charges for electricity consumption in respect of the accounts held by the applicant with the first respondent. The court order also directed the steps to be taken by the parties in order to resolve the disputes between them. The question of costs stood over for later determination. The parties were required to file heads of argument in respect of costs, so that the matter may be considered in chambers, which they did.

[2] There is a history of litigation between these parties. In order to understand the

arguments in relation to costs, it is perhaps useful to outline, briefly, the relevant background in this matter. The first respondent supplies electricity to the premises owned by the applicant. It appears that there are several businesses being operated from those premises, which is served by two electricity meters. The charges arising from the recordings of these meters resulted in a long standing dispute between the parties regarding the correctness of the electricity account for the applicant's premises, the details of which are not relevant for present purposes. For a number of years, after the applicant declared a dispute in relation to the municipal electricity account, there was correspondence and other engagements between the parties, seemingly without resolution of the problem.

[3] Towards the end of April 2024, the first respondent disconnected the electricity supply to the premises, which led to an urgent application being brought by the applicant in May 2024 under case number 2575/2024, for restoration of the electricity supply and prohibiting the respondent from disrupting or disconnecting the electricity supply to the applicant's premises until the dispute in relation to the electricity account had been resolved. An interim order was granted on 15 May 2024, returnable on 20 June 2024. On the latter date the rule nisi was confirmed (the first order). The interactions between the parties continued thereafter with a view to reaching agreement on the outstanding amount payable by the applicant, but this did not materialise. The respondent, issued a demand for payment from the applicant of an amount of almost R3 million and notified the applicant that if payment was not made, the electricity to the premises would be disconnected. This indeed happened on 2 September 2024, when the employees of the respondent disconnected the electricity to the applicant's premises, resulting in the current application being brought before this court on an urgent basis on 5 September 2024, as I detailed earlier.

[4] After the respondents filed their answering affidavit, the applicant served a notice in terms of Uniform Rule 7 on 22 October 2024, disputing the authority of Amos Mokoae (Mr Mokoae) to represent the respondents and called for proof of his authority to do so. The respondents filed, on 31 October 2024 and in response thereto, an extract of the first respondent's delegation policy in terms of which the Chief Financial Officer had the authority, *inter alia*, to commence legal process on behalf of the council (of the first respondent), including the authority to sign all necessary documents in this regard. The

respondents also attached a letter appointing Mr Mokoae permanently as the Chief Financial Officer (CFO) of the first respondent with effect from 3 January 2024. On 18 November 2024, the applicant filed an affidavit, responding to the respondents' response to the applicant's rule 7 notice, in which it disputed the validity of Mr Mokoae's appointment as CFO of the first respondent. In support of this contention, it attached to its affidavit a copy of an arbitration award, made on 5 January 2023, in an arbitration between Mr Mokoae and the Mafube Local Municipality in which Mr Mokoae claimed to have been unfairly dismissed by the latter. The arbitrator ruled that the dismissal was substantively fair and dismissed Mr Mokoae's claim of unfair dismissal.

[5] The applicant erroneously alleged that the first respondent had dismissed Mr Mokoae. The applicant also attached an undated and unsigned letter, ostensibly written by the Member of the Executive Council, Department of Cooperative Governance Traditional Affairs and Human Settlements (MEC: COGTA), in which the latter indicated that the appointment of Mr Mokoae as CFO of the first respondent was invalid on account of proper procedures in making the appointment not having been followed and on account of Mr Mokoae's dismissal from the Mafube Local Municipality, making him ineligible for appointment for ten years. This affidavit precipitated a notice in terms of Uniform Rule 30(2)*(b)* on 19 November 2024, where the respondents notified the applicant that its affidavit constituted an irregular step, on the basis that it had provided the proof of Mr Mokoae's authority called for in the applicant's rule 7 notice. Further, that neither rule 7 nor any other rule provided for the filing of an affidavit as the applicant had done. The respondents also alleged that the applicant's affidavit constituted a further affidavit which, in terms of Uniform Rule 6 may not be filed without the leave of the court. The applicant had not obtained such leave. The respondents called upon the applicant to remove the cause of the respondents' complaint by 25 November 2024. The applicant clearly failed to respond to the notice which resulted in the respondents, on 27 November 2024, bringing an application, on an urgent basis, seeking an order declaring the applicant's affidavit in response to the respondents' rule 7 response an irregular step and setting it aside. This, as I indicated earlier, was a day before the 'main' application by the applicant was due to be heard, resulting in the application and the rule 30 application being postponed for hearing on 30 January 2025.

[6] Both parties filed heads of argument in respect of the issue of costs. I will deal briefly with each argument. The applicant stated, in essence, that in the circumstances of the matter, which I outlined earlier, it became necessary for the applicant to approach court. The respondent's conduct was unlawful and was a violation of the first order. If the applicant had not approached the court on 5 September 2024, the electricity to its premises would not have been restored. The applicant argued further that the respondents' late opposition of the application, for the purposes of the return date, indicates that had the applicant not persisted with this application, the respondent would, in all likelihood, have disconnected the electricity again. The respondents seemed set on disconnecting the electricity because of their claim that the account was in arrears. This, argued the applicant, despite the respondent being aware that the applicant disputed the respondents' assertion that the dispute relating to electricity consumption had been resolved. The subsequent settlement and order by the court on 31 January 2025 is an acknowledgment by the respondents that the dispute had not been resolved.

[7] The applicant asserted that the interdict contained in paragraph 1 of the draft order aligns materially with the relief sought by it in the main application, justifying its having to approach the court. The respondents opposed the matter on overly technical grounds. In addition, so the applicant argues, the respondent's argument that the applicant should have pursued contempt proceedings not only lacks merit but is disingenuous in view of its repeated assertion that the dispute between the parties, in relation to electricity consumption charges had been resolved. With regard to the respondents' rule 30 application the applicant asserted that it lacked merit and was destined to fail, as the respondents neither alleged nor made out a case to show that they would have suffered any prejudice if the affidavit were to serve before the court. The rule 30 application precipitated the filing of the applicant's conditional counter-application, which it did 'out of an abundance of caution'. The respondent unreasonably opposed the conditional counterclaim, even though the applicant sought to cure their complaint that the leave of the court had not been obtained for the filing of the affidavit. The effect of the respondents'

actions was to escalate legal costs. The respondents' conduct therefore justifies a punitive costs order being granted against them.

[8] The respondents countered the applicant's assertions that it is entitled to punitive costs as it was successful in the interdict application and that the respondents acted in contravention of an existing court order when it disconnected the electricity in September 2024. They persisted with their contention that the applicant should have resorted to contempt of court proceedings, and asserted that this is confirmed by the applicant's version that it was already granted a court order which is binding. It further asserted that when it accused the applicant of abusing the process of court by bringing the current application, the latter challenged the authority of the deponent to the respondents' answering affidavit by issuing a rule 7 notice. The respondents argued further that the applicant was not permitted to file the affidavit responding to its response to the applicant's rule 7 notice, without having obtained the leave of the court to do so, as required by Uniform Rule 6(5)*(e)*. This resulted in the issuing of the notice and application in terms of Rule 30.

[9] The respondents further contended that they did not disconnect the electricity, in contravention of the first order, as a result of the account being in arrears. They did so due to illegal (electrical) connections which they discovered at the applicant's premises. The applicant was not successful to the extent that it claims, and its success does not merit a punitive costs order, or a costs order against the respondent. The respondents reiterated that the applicant abused the process of court by requesting interdictory relief when it was already armed with the first order granted in June 2024. They contended further that the filing of the further affidavit in response to proof of Mokoae's authority, was without the leave of the court and very shortly before the hearing of the matter on 28 November 2024, causing the postponement of the proceedings on that day. The respondents argued that the applicant should bear the costs of the postponement on 28 November 2024. With regard to the costs of the application and the proceedings on 31 January 2025, the respondents submitted that each party should pay its own costs.

[11] The established rule of practice with regard to costs, and which is common cause between the parties, is that costs are generally awarded to the successful party. The

purpose of a costs order is to ensure that the successful party is not unduly out of pocket, where he was obliged to approach the court for the relief he sought and ultimately obtained. The Constitutional Court (CC) summarised the principles relating to costs in the much-quoted case of *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell*,[1] where the court, in extracting the principles from various cases, said at para 3:

'The Supreme Court has, over the years, developed a flexible approach to costs which proceeds from two basic principles, the first being that the award of costs, unless expressly otherwise enacted, is in the discretion of the presiding judicial officer, and the second that the successful party should, as a general rule, have his or her costs. Even this second principle is subject to the first. The second principle is subject to a large number of exceptions where the successful party is deprived of his or her costs. Without attempting either comprehensiveness or complete analytical accuracy, depriving successful parties of their costs can depend on circumstances such as, for example, the conduct of parties, the conduct of their legal representatives, whether a party achieves technical success only, the nature of the litigants and the nature of the proceedings. I mention these examples to indicate that the principles which have been developed in relation to the award of costs are by their nature sufficiently flexible and adaptable to meet new needs which may arise in regard to constitutional litigation. They offer a useful point of departure. If the need arises the rules may have to be substantially adapted; this should however be done on a case by case basis. It is unnecessary, if not impossible, at this stage to attempt to formulate comprehensive rules regarding costs in constitutional litigation.'

[12] The determination of an appropriate costs order is in the discretion of the court, which discretion is usually informed by a number of factors in order that such discretion be exercised judiciously. *Erasmus*,[2] states it succinctly as follows:

'In leaving the court a discretion, the law contemplates that it should take into consideration the circumstances of each case, carefully weighing the issues in the case, the conduct of the parties and any other circumstance which may have a bearing on the issue of costs and then make such order as to costs as would be fair and just between the parties'.

[13] It is also well established that the general rule that costs are awarded to the successful party may also be applied to the case where the parties have reached a settlement on the merits but costs remain in dispute, as is the case in the present matter.

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[1] *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* [1995] ZACC 13; 1996(2) SA 621 (CC).

[2] Van Loggerenberg *et al Erasmus: Superior Court Practice* 3 ed vol 1 (Original Service Issue, 2023) at D5-6/7.

The settlement in this matter came a day after the matter was fully argued before this Court. It is not in dispute that there was a plethora of correspondence between the parties, mostly from the applicant to the first respondent, with regard to the dispute raised by the applicant, who alleges that the first respondent simply ignored its various attempts to resolve the matter. I do not propose to deal with the merits, except if it is relevant to the determination of costs. However, the ancillary issues of the rule 7 notice and responses, as well as the rule 30 application require some mention. Rule 7(1) provides:

'Subject to the provisions of subrules (2) and (3) a power of attorney to act need not be filed, but the authority of anyone acting on behalf of a party may, within 10 days after it has come to the notice of a party that such person is so acting, or with the leave of the court on good cause shown at any time before judgment, be disputed, whereafter such person may no longer act unless he satisfied the court that he is authorised so to act, and to enable him to do so the court may postpone the hearing of the action or application.'

[14] The respondents responded by furnishing the first respondent's Delegation Policy which indicates that the CFO has the power to represent the first respondent in legal proceedings, established the authority of the person holding that position. As I indicated earlier, the respondents also attached an appointment letter, confirming that Mr Mokoae was permanently appointed as the CFO. This, in my view, sufficed to satisfy the requirements of rule 7. While the rule does not provide for any procedure or method to challenge the proof so provided, my view is that the rule 7 notice is a matter ancillary to the main application and it may well be debatable whether rule 6(5) applies to rule 7. However, the filing of the further affidavit by the applicant could not, in my view, have been of value in advancing the matter, because s 7(1) merely requires that the court must be satisfied that authority existed at the time when proof of it is proffered. The rule does not, in my view, suggest that the court is required to investigate the validity of past acts in the context of the authority to act. The arbitration proceedings and the award made therein were not a matter that this court could permissibly consider, much less the appointment of Mr Mokoae. The applicant ought to have known better than to put before this Court an undated and unsigned letter indicating that Mr Mokoae's appointment was irregular and invalid.

[15] The applicant did not validly or permissibly challenge the appointment nor make out any case for this Court to investigate the validity of Mr Mokoae's appointment. In my view, the only purpose that affidavit served was to muddy the waters, and that I need pay no

heed to it. The appointment of Mr Mokoae is an administrative act which stands until it is set aside. This court cannot in any way consider the validity or otherwise of such appointment without the proper procedures being followed to place that matter before it. The filing of the rule 30(2) notice by the respondents ought to have evoked some response from the applicant, indicating at least what outcome it was hoping to achieve by the introduction of the evidence by way of that affidavit. The respondents were, therefore, compelled to move the application in terms of rule 30.

[16] To my mind, the parties in this matter allowed the acrimony between them to cloud their common sense, which ought to have prevailed in attempting a resolution of such a long- standing dispute. The respondents' attitude was somewhat high-handed in not responding to the applicant's correspondence and disconnecting the electricity supply. However, the applicant appears not to be blameless either, if the respondents' version is to be taken into account, that there were illegal electrical connections at the applicant's premises. The taking of technical points, filing of process unnecessarily and failing to engage meaningfully with each other in order to resolve this matter have been considered. Both parties seem to have regained their common sense only after the matter was fully argued, which, at that stage, would have caused the costs in this matter to have escalated even further. The settlement they reached after the matter was argued ought to have occurred much earlier, in order to contain costs.

[17] In exercising the discretion with regard to costs, I have taken account of the history in this matter and the events that led to this matter coming before me. The interests of justice and of fairness to both parties have also been factored into those considerations. In my view, a fair order would be to direct each party to pay its own costs.

[18] In the circumstances, I make the following order:

Each party is ordered to pay its own costs

[redacted]

NAIDOO J

JUDGE OF THE HIGH COURT

Appearances

For the Applicant:	Adv Van der Merwe
Instructed by:	Symington De Kok Attorneys 169B Nelson Mandela Drive Westdene Bloemfontein Ref: FKM0255
For the Respondents:	Adv Rautenbach
Instructed by:	Phatshoane Henney Attorneys 35 Markgraaff Street Bloemfontein Ref: 273851/MLO/kc